Manifestly the immediately important step was to investigate the identity of the articles. The Officer-in-charge, Police District, should have borrowed half-a-dozen or more common articles of jewellery — laid them on a table with the three articles recovered interspersed and then said to the complainant: — "Look on that table and if there is anything of yours there, pick it out." If she had then picked out all three articles their identity would have been clearly established and also the omission of the necklace from her report would have been made good. We do not regard that omission as in the least affecting her credit because it is common experience that not all the articles stolen are missed on the first inspection but it detracts a little from the weight of her evidence as to the necklace. Further, in the absence of any detailed evidence of her identification of the articles we are forced to conclude that they were merely shewn to her and that she claimed them — which is, in effect, answering a grossly leading question. On the other hand we have the facts that she mentioned a ring and bracelet before she could have known of the arrest, that these two articles were in the possession of the appellant, that they are of a type natural to her but unusual to the appellant, that she was not cross-examined as to her identification of them and that no question as to that identification was put to the Officer-in-charge, Police District, who was called as a witness for the defence. In these circumstances we are of opinion that the identity of the articles was sufficiently proved.

As regards the identity of the person, we have the undisputed fact that the Chinese stall-holder pointed out the appellant on the spot as the man who disposed of the jewellery; the evidence is confirmed not only by Suppiah but also by the accused himself. This fact tends strongly to exclude the chance of mistake in identity by the other independent witness, the mechanic, who testifies to the actual entry.

Having given the most detailed and anxious consideration to this case, disregarding altogether the evidence which was wrongly admitted and ignoring the dubious identification at the parades, we are left with clear proof of a house-breaking and theft, with undisputed evidence of very recent possession and the absence of a reasonable explanation. These facts, coupled with the evidence of one sound witness who identifies the appellant as the wrongful entrant, constrain us to hold that the appellant was rightly convicted on both charges.

His Commanding Officer gave him an excellent character as a soldier. We accept this unreservedly. We do not suspect that he started off from his camp that evening with an intention to steal. Though he had taken some drink he was never in such a state as to be incapable of forming a criminal intention. It is likely enough that he would not have formed such an intention had he not been to some extent inflamed or made reckless by drink but these factors can only affect sentence; they do not reduce responsibility for crime.

The concurrent sentences of two years and one year, to run from the date of the offence, are in no way excessive. In the result the appeal is dismissed.

Appeal dismissed.

TAN PENG ANN v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Thomson, J.) December 29, 1949]

[Ipoh — Criminal Appeal No. 88 of 1949]

Penal Code, s. 420 — Charge of cheating — What particulars necessary in — Cheating — What amounts to.

In this case the appellant was convicted on two charges of cheating and dishonestly inducing the delivery of property in contravention of section 420 of the Penal Code. In the charges no particulars were alleged of the way in which the appellant deceived the complainants.

Held, (1) that in framing such a charge it is necessary to set out not merely the fact that accused had obtained goods by dishonest means, but also the deception which has been practised; and (2) that it is not every form of dishonestly inducing a person to deliver property that amounts to cheating, but only those forms of it in which the dishonesty consists in the deceiving of the person concerned.

Cases referred to:—

(1) *Kanwar Sain v. The Crown* (1938) I.L.R. 19 (Lahore) 662.

(2) *Sathiah v. Rex* (1938) M.L.J. 30.

CRIMINAL APPEAL from the Sessions Court, Ipoh.

C. W. Shuttleworth for the appellant.

E. N. Griffith-Jones for the respondent.

The facts appear sufficiently from the judgment.

Cur. Adv. Vult.

Thomson, J.: — The appellant in this case appeared before the Sessions Court at Ipoh on two charges of cheating and dishonestly inducing the delivery of property in contravention of section 420 of the Penal Code. He was convicted on both charges, and in respect of each was sentenced to three months' rigorous imprisonment and in addition to pay a fine of $500/- or undergo a further period of three months' rigorous imprisonment in default of payment. He was also ordered to pay sums amounting in the total to $500/- by way of compensation to three persons who were in

fact the complainants in the case. Against these convictions and sentences he has now appealed.

The appellant holds no official position of any sort but he is a person of some importance in the Chinese community at Bidor and would appear to have had a certain amount of what is popularly known as "influence" with the police. The extent and nature of that "influence" are not altogether clear, but it was stated in evidence by a responsible police officer "the accused's opinion was usually respected as carrying weight. He has assisted us and we have approached him."

On the first charge the case for the prosecution was that in June, 1948, the son and daughter of one Kong Yin were arrested by the police under the Emergency Regulations and that shortly afterwards Kong Yin paid to the accused a sum of $300/- to attempt to secure the release of his son and daughter. On the second charge it was alleged that one Lim Ah Thian and one Lim Choon had similarly each paid the accused $100/- in connection with attempts to be made to secure the release of two friends of theirs, Lim Hee Chong and Lim Moi Huat who had been arrested on 29th May, 1949. In the event, the son and daughter of the complainant in the first charge were banished to China and the two friends of the complainants in the second charge were released nine days after their arrest on the ground that they had been arrested as a result of a mistake in identification.

The defence was a complete denial of the receipt of any money from any of the complainants and a complete denial of any undertaking to give any of them any assistance in their troubles. The learned President accepted the evidence of all three complainants as true and rejected as untrue the evidence of the accused. He does not appear to have regarded the evidence of the complainants as requiring corroboration for reasons which he states in his grounds of judgment. He proceeded to convict the accused on both charges.

The grounds of appeal may conveniently be summarised as follows :—

(i) That the evidence was not sufficient to support the conclusion that the evidence of the complainants was true while that of the accused was untrue;

(ii) That the evidence of the complainants was that of accomplices and that the learned President misdirected himself in not requiring corroboration of their evidence; and

(iii) That there was no evidence to show that the complainants had been in any way deceived by anything done by the appellant or that the appellant had acted dishonestly.

With regard to the first two grounds of appeal, I have considered the evidence with care in the light of what has been said about it by Counsel, and I see no reason for interfering with the finding of the learned President that the evidence of the complainants was substantially true and that the contrary evidence of the appellant was untrue. Moreover, it was not a case where the evidence of the complainants was peculiarly in need of corroboration. It was said that on the complainants' own showing, some, at any rate, of the money was to be used by the accused in paying bribes to public servants. That may well be, and if any attempt had in fact been made to pay bribes the complainants might well have been regarded as accomplices of the accused in such an attempt. The accused, however, was not charged with any offence connected with the bribery of public servants. He was charged with cheating the complainants which is an entirely different offence, and in the commission of that offence, if it were committed, the complainants were certainly not his accomplices.

At this stage I turn to consider the exact nature of the charges upon which the appellant was tried and convicted. These charges were amended in the course of the trial but in their final form they read as follows :—

1st Charge:

That you in or about the month of July, 1948 at Bidor did cheat Kong Yin by dishonestly inducing him to deliver to you the sum of $300/- for the purpose of obtaining the release of Kong Chan Koo and Kong Yook Poh, the son and daughter of the said Kong Yin from lawful custody and that you thereby committed an offence punishable under section 420 of the Penal Code, Cap. 45.

2nd Charge:

That you in or about the month of May, 1949, at Bidor did cheat Lim Ah Thian and Lim Choon by dishonestly inducing them to deliver to you the sum of $200/- for the purpose of obtaining the release of Lim Moi Huat and Lim Hee Chong from lawful custody and that you thereby committed an offence punishable under section 420 of the Penal Code, Cap. 45.

It is not one of the grounds of appeal that these charges were defective. Nevertheless, in my opinion, they were defective, and a consideration of their defects is necessary in order to say whether or not it was proved that the complainants were deceived by the appellant.

In each charge there is an allegation that the appellant cheated the complainant by dishonestly inducing him to deliver a sum of money for the purpose of obtaining the release of certain persons from lawful custody. It is not, however, every form of dishonestly inducing a person to deliver property that amounts to cheating, but only those forms of it in which the

dishonesty consists in deceiving of the person concerned. In the charges here, no particulars are alleged of the way in which the appellant deceived the complainants. In this connection, I would quote the following passage from the judgment of Beckett, J. in the Indian case of *Kanwar Sain v. The Crown*[1] :—

> While the prosecution evidence provides sufficient material for the framing of a charge of cheating, the charge itself has not been properly drafted. In framing such a charge it is necessary to set out not merely the fact that the accused had obtained goods by dishonest means, but also the deception which has been practised. . . . . The charge framed in the trial Court merely states that the accused cheated the complainant by dishonestly inducing him to deliver certain property, but it does not even indicate the nature of the representations by which the complainant was induced to make over the goods. It is necessary that the representation should be mentioned in the charge, so that the accused may have an opportunity of saying either that he never made such representation, or that the representation was not in fact false, or that it was not in consequence of this representation that the goods were obtained.

I would also refer to the following observations by McElwaine, C.J. in the Singapore case of *M. Sathiah v. Rex*[2] :—

> The need of framing a precise charge is all the stronger when the charge is based on a transaction of this kind, in which the representation is implied rather than directly expressed.
>
> A charge, and especially a charge in a complicated case, should be accompanied by particulars of the acts complained of as constituting the crime charged when the mere mention of the time, place, persons and crime are insufficient to explain by what means the crime was committed. This is particularly necessary in charges of such offences as cheating.
>
> The particulars need not be incorporated in the charge. It is sufficient if they are contained in a separate memorandum supplied to the accused and to the Court.
>
> Such a course helps the prosecutor by providing a simple list of the main points which he must prove; it helps the accused by letting him know exactly what he is alleged to have done that was wrong; it helps the Court by giving it a proper outline of the case which enables it to appreciate the significance and bearing of any piece of evidence as it is given.

If the present appellant induced the complainants to pay him money by deceiving them, the deception which he practised upon them must have taken place prior to their handing over the money, for otherwise it could not be said they were thereby induced to part with their money by it, and on the evidence the only such deception that could have been alleged was a representation which the appellant knew to be false that he had a then present intention of using the influence which he clearly possessed on behalf of their friends. Had such a false representation been alleged and had the learned President applied his mind to such an allegation, I am not prepared to say on the material before me what the result might have been. The fact is, however, that no such allegation was either made or considered and everybody concerned became involved in the very predicament envisaged by McElwaine, C.J., in the observations by him which I have quoted. This cannot be said to have prejudiced the appellant in the conduct of his defence for his defence was that he never had any dealings of any sort with the complainants, but it imported a most unfortunate amount of confusion into the case.

At the beginning of the case what the President had to start from, apart from the bare charges as framed, was a statement by Counsel for the Prosecution that the accused got money from the complainants by representing that he was able to secure the release of detained persons and that this was false because he had no such powers. At the end of the case, the President arrived at the following result :—

> The basis of cheating is deceiving. The deception in the first charge was that the accused would use his undoubted influence to obtain the release of P.W. 1's children. They were not released: from this fact the deduction is that the accused did not use his influence. The detained persons referred to in the second charge were released. The **prima facie** evidence is that it was through no act of the accused.

That is the only passage in which he formulates the question which he had to answer and the way in which he proposed to answer it, and as such it calls for close examination.

In the first place, he rejects the basis on which the case had been opened by Counsel for the Prosecution and finds that it was true that the appellant had some sort of influence with the police. He goes on to find that the appellant represented that he "would" use that influence in the desired direction which I take to mean that he had at the time of making the representation a then present intention of using his influence. His next step should have been to ask himself whether that representation was true or false but if that question was asked I can nowhere find that it was answered.

To say that the appellant did not in fact use his influence, may or may not be justified by the evidence, but it is not an answer to the question whether his representation that he had an intention of using that influence in a particular way was true or false. Nor does it in itself afford any safe ground for saying that the answer to that question is that the representation in question was false. In the absence of anything to the contrary, it may be safe to presume that a man's acts spring from his intentions but it by no means follows as a result either of formal logic or of human experience that his omissions support the inference of any lack of intention. In short, there has been a confusion between the *factum probandum* which was that the accused had never any intention of doing

anything for the complainants, with one of the available *facta probantia* which was that in fact he did nothing.

In the circumstances, I am bound to say that the learned President never applied his mind to the main issue he had to decide. The case against the appellant as opened by the prosecution was not proved and the real case against him as it emerged from the evidence was never considered. The convictions therefore cannot stand and the appeal must be allowed.

The only remaining question which has caused me difficulty is whether or not I should order a re-trial. I do not propose to do so. On the evidence it was not the appellant who approached the complainants. It was the complainants who approached him. I have little doubt that what happened was that being in trouble they approached him as a person who had influence with the authorities, that he being a person with few, if any, moral scruples, was quite prepared to accept the money which they were willing to pay him, and that the only understanding between them was that if he could do anything to assist them he would do it. That may be an example of certain practices which are said to be very prevalent in this country but it does not amount to cheating within the meaning of the Penal Code.

Appeal allowed.

LIM KIAT HEAN AND ANOTHER v. REX.

[App. Crim. Juris. (Gordon-Smith, Ag. C.J.) Jan. 13, 1949]

[Singapore — Magistrate's Appeal No. 224 of 1948]

Liquors Revenue Ordinance (225), ss. 38(1) and 87 — Sale of liquor from licensed premises for consumption on unlicensed premises.

In this case the facts shortly were that two Revenue Officers took their seats on a table on the lawn of a Rest House, which was not licensed for the sale of intoxicating liquor, and ordered a chop and a bottle of beer. The waiter said that there was no beer for sale at the Rest House and the Revenue Officers then asked him to "go outside" and buy it. The waiter did so and bought the bottle of beer at a licensed premises with his own money. The waiter and the managing partner of the Rest House were charged and convicted for selling the bottle of beer at the Rest House, such Rest House not having been licensed. They appealed against their conviction.

Held, (1) that on the facts the waiter purchased the bottle of beer as agent for the Revenue Officers and the only sale of beer was at the shop outside to the waiter as the agent of the Revenue Officers; (2) that the sale of beer at the shop outside was a sale to the Revenue Officers and that there was not, in law, a re-sale of the beer to the Revenue Officers at the Rest House.

Cases referred to:—

(1) *Ibrahim v. Public Prosecutor* (1933) M.L.J. 46.
(2) *Rex. v. J. W. Lim* (1941) M.L.J. 7.
(3) *Lambert v. Rowe* (1914) 1 K.B. 38.
(4) *Pasquier v. Neale* (1902) 2 K.B. 287.
(5) *Jones v. Mighall* 48 T.L.R. 636.
(6) *Allen v. Whitehead* (1930) 1 K.B. 211.
(7) *Boyle v. Smith* (1906) 1 K.B. 432.
(8) *Somerset v. Hart* 12 Q.B.D. 360.
(9) *Furby v. Hoey* (1947) 1 All E.R. 236.
(10) *Canadian Pacific Railway v. Lockhart* (1942) A.C. 591 at p. 599.
(11) *Coppen v. Moore (No. 2)* (1898) 2 Q.B. 306.

MAGISTRATE'S APPEAL.

T. W. Ong for the appellants.

A. D. Farrell (D.P.P.) for the Crown.

The facts and arguments appear sufficiently from the judgment.

Cur. Adv. Vult.

Gordon-Smith, Ag. C.J. : — This is an appeal by both accused against their conviction by the Magistrate on the 20th October, 1948, for a contravention of the Liquors Revenue Ordinance (Cap. 225), section 38(1), that is to say, for selling a bottle of beer at the Bedok Rest House at 11.10 p.m. on the previous 24th August, such Rest House not having been licensed. Both accused were fined $200.

The learned Magistrate in his judgment states that the evidence was only seriously disputed in two respects, namely, as to the cost of the beer at Chop Hock Seng and as to who opened the bottle at the table, and I accept his findings in these respects.

There is, however, no specific finding of fact on the evidence in one respect which I consider to be of importance, but in this respect I think the Magistrate accepted the evidence of accused No. 2 and I also accept his evidence in this respect. The facts, therefore, are briefly as follows, so far as really relevant to the issue before me:

Accused No. 1 is the managing partner of the Rest House and of some experience in these matters. I will call him the proprietor. Accused No. 2 is a waiter employed there, not of any great experience as such but he had been employed as a steward on a ship. The premises had been adapted at considerable expense and the place was opened and business commenced on the 21st August. An application for a liquor licence had been made but had not been granted on the 24th August and has not yet been granted, pending the